

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSIN RE ORGANOGENESIS SECURITIES
LITIGATION

Civ. No. 04-10027-JLT

**DEFENDANTS' MOTION TO SERVE THIRD PARTY SUBPOENA *DUCES TECUM*
AND *AD TESTIFICANDUM***

Pursuant to this Court's Discovery Order that “[n]o additional discovery shall take place without further order of the court,” Defendants Albert Erani, Philip Laughlin, Donna Abelli Lopolito, Michael Sabolinski and Alan Tuck (“Defendants”) respectfully move this Court for leave to serve a subpoena *duces tecum* and *testificandum* upon Mr. John Colley.

As grounds for this motion, Defendants state:

1. Mr. Colley is the Principal of Colley Asset Management, Inc. (“CAM”), the investment advisory firm that exercised sole investment discretion in purchasing Organogenesis, Inc. stock in the name of Plaintiff Bruno Hofmann during the putative Class Period.
2. This Court already has granted Defendants leave to serve a subpoena *duces tecum* on CAM. Dkt. Nos. 115, 116. Now, Defendants seek leave to depose and obtain documents from Mr. Colley.
3. Leave to obtain discovery from Mr. Colley is appropriate, as Mr. Hofmann testified during his August 22, 2006 deposition that he learned about Organogenesis, Inc. *after* Mr. Colley (again, pursuant to his unfettered investment discretion) purchased Organogenesis, Inc. stock in Mr. Hofmann’s name. Documents produced by Mr. Hofmann indicate that Mr. Colley had direct and personal communications with Organogenesis, Inc. senior management during the putative Class Period.
4. Plaintiffs themselves have identified Mr. Colley on their initial disclosure statement as a person known or believed to have discoverable information about the claims that Plaintiffs have asserted in this action.

WHEREFORE, Defendants respectfully request this Court grant leave for them to serve a subpoena *duces tecum* and *ad testificandum* upon Mr. John Colley.

Respectfully submitted,

WILMER CUTLER PICKERING HALE AND
DORR LLP

By: /s/ Jonathan A. Shapiro
Jeffrey B. Rudman (BBO #433380)
Jonathan A. Shapiro (BBO #567838)
Peter J. Kolovos (BBO #632984)
Sherry Hartel Haus (BBO# 663777)
Kimberly I. Friday (BBO # 660544)
60 State Street
Boston, MA 02109
(617) 526-6000

*Counsel for Defendants Albert Erani, Donna
Abelli Lopolito, Philip Laughlin, Michael
Sabolinski, and Alan Tuck*

Dated: March 1, 2007

LOCAL RULE 7.1(A)(2) AND 37.1 CERTIFICATION

Counsel for defendants John Arcari and Herbert Stein have been advised of this Motion, and assent to it. Counsel for Plaintiffs have been advised of this Motion and stated that they reserve their right to take a position on this Motion after it has been filed.

/s/ Kimberly I. Friday
Kimberly I. Friday

CERTIFICATE OF SERVICE

I, Kimberly I. Friday, hereby certify that a true copy of this document was filed through the ECF system on March 1, 2007, and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Kimberly I. Friday